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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,936	11/21/2001	Kevin S. Brandt	FC-6-C4	7792

26949 7590 11/12/2004

HESKA CORPORATION  
INTELLECTUAL PROPERTY DEPT.  
1613 PROSPECT PARKWAY  
FORT COLLINS, CO 80525

EXAMINER

STRZELECKA, TERESA E

ART UNIT	PAPER NUMBER
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1637

DATE MAILED: 11/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/991,936

Applicant(s)

BRANDT ET AL.

Examiner

Teresa E Strzelecka

Art Unit

1637

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☐ The proposed amendment(s) will not be entered because:  
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 29-33,37,38 and 48-53.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☐ Other: \_\_\_\_\_

TS  
11/7/04

JEFFREY FREDMAN  
PRIMARY EXAMINER

11/7/04

Teresa E Strzelecka  
Examiner  
Art Unit: 1637

Continuation of 5. does NOT place the application in condition for allowance because:

Applicants arguments regarding the rejection of claims 29-33, 37, 38 and 53 under 35 U.S.C. 112, first paragraph, written description and rejection of claims 29-33, 37, 38 and 48-53 under 35 U.S.C. 101, utility are not considered persuasive. Regarding Applicants' arguments that claims 29-33, 37, 38 and 53 fulfill the written description requirement because of the limitation "chloride channel activity" and the fact that all chloride channels have the function of transporting anions, this limitation does not limit significantly the number of sequences claimed by Applicants, since there are thousands of chloride channels present in different cells, and since a term "chloride channel" encompasses proteins with coupled chloride and other ion transport (see Fig. 1 of Jentsch).

Applicants argue that a sequence homology of SEQ ID NO: 1872 to laminin "does not provide any reason to doubt that that the claimed nucleic acid molecule encode chloride channels because the alignments are to reverse strands relative to the nucleic acid molecule of the present invention". However, as indicated in the previous office action, SEQ ID NO: 1875 is 52.5% identical to laminin and 52.5% identical to human ion channel, with the alignment provided for the strand of SEQ ID NO: 1875, which Applicants claim as encoding SEQ ID NO: 1873. Therefore, the sequences found in the alignment should also encode a protein, and, further, exactly the same degree of homology to two proteins with entirely different functions is an indication that Applicants claim of utility as a chloride channel based on 37.5% hology to a human chloride channel is not supported .